

whichever is later, the Owner shall determine whether the tenant population of the project generally reflects the racial/ethnic makeup of the housing market area. Based on this determination, the Owner shall then conduct appropriate marketing activities in accordance with a HUD-approved Affirmative Fair Housing Marketing Plan. Such activities may include special outreach to those groups identified as not ordinarily expected to apply for these units without special outreach; notification to PHA's in the housing market area of any anticipated vacancies; and formulation of waiting lists based on the Owner's HUD-approved tenant selection factors.

(2) Where a PHA is notified, the PHA shall notify an appropriate size family (families) on its waiting list of the availability of the unit and refer the family (families) to the owner. (Since the Owner is responsible for tenant selection, the owner is not required to lease to a PHA selected family, but the owner must comply with § 886.321(b)(6).)

[44 FR 70365, Dec. 6, 1979, as amended at 53 FR 1169, Jan. 15, 1988; 53 FR 6601, Mar. 2, 1988; 58 FR 43722, Aug. 17, 1993; 60 FR 14846, Mar. 20, 1995; 65 FR 16724, Mar. 29, 2000]

EFFECTIVE DATE NOTE: At 65 FR 16724, Mar. 29, 2000, § 886.321 was amended by revising paragraph (b)(1); paragraph (b)(2) was amended by removing "or to accept applications only from families that claim a Federal preference under § 886.337" and the sentence starting with the word "Notwithstanding" and paragraph (b)(7) by removing "24 CFR 812.9, and 24 CFR 812.10" and adding "part 5 of this title" in its place, effective Apr. 28, 2000. For the convenience of the user, the superseded text is set forth as follows:

§ 886.321 Marketing.

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(b)(1) HUD will determine the eligibility for assistance of families in occupancy before sales closing. After the sale, the owner shall be responsible for determining the eligibility of applicants for tenancy (including compliance with the procedures of 24 CFR part 812 on evidence of citizenship or eligible immigration status), selection of families from among those determined to be eligible (including provision of Federal preferences in accordance with § 886.337), and computation of the amount of housing assistance payments on behalf of each selected family, in accordance with the Gross Rent and the

Total Tenant Payment computed in accordance with 24 CFR part 813. The owner shall pay any utility reimbursement to each family each month it is due. Local residency requirements are prohibited. Local residency preferences are discouraged and may be applied in selecting tenants only to the extent that they are not inconsistent with HUD's affirmative fair housing marketing objectives and the owner's HUD-approved Affirmative Fair Housing Marketing Plan. With respect to any residency preferences, persons expected to reside in the community as a result of current or planned employment must be treated as residents.

(2) * * * Notwithstanding the fact that the owner may not be accepting additional applications for tenancy because of the length of the waiting list, the owner may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for participation and claims that he or she qualifies for a Federal preference as provided in § 886.337(c)(2), unless the owner determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions to the project, that (i) there is an adequate pool of applicants who are likely to qualify for a Federal preference and (ii) it is unlikely that, on the basis of the owner's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for admissions before other applicants on the waiting list. * * *

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§ 886.322 [Reserved]

§ 886.323 Maintenance, operation, and inspections.

(a) *Maintain decent, safe, and sanitary housing.* The owner shall maintain and operate the project so as to provide decent, safe, and sanitary housing and the owner shall provide all the services, maintenance, and utilities which he or she agrees to provide under the contract and the lease. Failure to do so shall be considered a material default under the contract and Regulatory Agreement, if any.

(b) *HUD inspection.* Prior to execution of the contract, HUD shall inspect (or cause to be inspected) each proposed contract unit and related facilities to ensure that they are in decent, safe, and sanitary condition.

(c) *Owner and family inspection.* Prior to occupancy of any vacant unit by a family, the owner and the family shall inspect the unit and both shall certify that they have inspected the unit and have determined it to be decent, safe, and sanitary. Copies of these reports shall be kept on file by the owner for at least 3 years.

(d) *Annual inspections.* HUD will inspect the project (or cause it to be inspected) at least annually and at such other times as HUD may determine to be necessary to assure that the owner is meeting his or her obligation to maintain the units and the related facilities in decent, safe, and sanitary condition and to provide the agreed-upon utilities and other services. HUD will take into account complaints by occupants and any other information coming to its attention in scheduling inspections and shall notify the owner and the family of its determination regarding the condition of the units.

(e) *Failure to maintain decent, safe, and sanitary units.* If HUD notifies the owner that he/she has failed to maintain a dwelling unit in decent, safe, and sanitary condition, and the owner fails to take corrective action within the time prescribed in the notice, HUD may exercise any of its rights or remedies under the contract, or Regulatory Agreement, if any, including abatement of housing assistance payments (even if the family continues to occupy the unit) and rescission of the sale. If, however, the family wishes to be rehoused in another dwelling unit, HUD shall provide assistance in finding such a unit for the family.

§ 886.324 Reexamination of family income and composition.

(a) *Regular reexaminations.* The owner must reexamine the income and composition of all families at least once each year. Upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with part 5 of this title and determine whether the family's unit size is still appropriate. The owner must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and carry out any unit transfer required by HUD. At

the time of the annual reexamination of family income and composition, the owner must require the family to disclose and verify Social Security Numbers, as provided by part 5, subpart B, of this title. For requirements regarding the signing and submitting of consent forms by families for the obtaining of wage and claim information from State Wage Information Collection Agencies, see part 5, subpart B, of this title. At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of part 5 of this title concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of part 5 of this title concerning verification of the immigration status of any new family member.

(b) *Interim reexaminations.* The family must comply with provisions in its lease regarding interim reporting of changes in income. If the owner receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the owner must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the Total Tenant Payment, Tenant Rent and Housing Assistance Payment must be verified. See part 5, subpart B, of this title for the requirements for the disclosure and verification of Social Security Numbers at interim reexaminations involving new family members. For requirements regarding the signing and submitting of consent forms by families for the obtaining of wage and claim information from State Wage Information Collection Agencies, see part 5, subpart B, of this title. At any interim reexamination after June 19, 1995 when there is a new family member, the owner shall follow the requirements of part 5 of this title concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(c) *Continuation of housing assistance payments.* A family's eligibility for